

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 830 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NEW CHAMUNDA CO-OP HSG SOC LTD

Versus

STATE OF GUJARAT

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Appearance:

MR PJ VYAS for Petitioner  
MR DP JOSHI, AGP for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/11/98

ORAL JUDGEMENT

Heard. The petitioner-society came to be registered on or around 17.7.1980. The land in question bearing Survey No. 60/1 (block No. 42) situate at Jagatpur, Taluka Dascroi belonged to one Ramtuji Shivaji who preferred an application seeking exemption under Section 20(1) of the Urban Land (Ceiling & Regulation) Act, 1976 ("the ULC Act" for short). On or around 17.11.1989 exemption was granted in respect of the land in question. As per one of the conditions of the exemption (condition No. 10), the petitioner-society purchased the said land. On or around 20.7.1993 N.A.

permission was accorded and even the Ahmedabad Urban Development Authority granted permission for the development of the land in question by order dated 28.6.1993. By show cause notice dated 29.3.1994 the petitioner was called upon to show cause why exemption should not be withdrawn. The petitioner replied the show cause notice on 12.4.1994 and 30.9.1994. By order dated 2.11.1994 the Deputy Secretary (R.D.), Government of Gujarat cancelled the exemption. It is the last mentioned order which has been subjected to challenge in this petition under Article 226 of the Constitution of India.

2. Now it is not in dispute that in this writ petition by order dated 3.4.1995 status quo was granted. It is also not in dispute that the respondent-State of Gujarat was required to move Misc. Civil Application No. 377 of 1996 before this Court alleging that the petitioner committed breach of the order of the status quo which was required to be maintained by both the sides. In that Misc. Civil Application, this Court had an occasion to impose fine upon the petitioner-society.

3. In the background of the aforesaid facts, it has to be noted that the members of the petitioner-society are poor persons and they have expressed through their learned advocate before this Court that they will not utilize any part of the property for commercial purpose and that they will make construction on the remaining land in question for residential purpose. Under such circumstances, a reference has been made to a decision of this Court (Coram : A.N. Divecha, J. as he then was) in Special Civil Application No. 1193 of 1986 and allied matters rendered on 24.2.1994. That petition was allowed as per the following order :-

"In the result, all these petitions are accepted.

The impugned order passed by the Competent Authority under Section 21(2) of the Act as affirmed in appeal by the appellate order under challenge in each petition is quashed and set aside. Each petitioner is permitted to carry on the construction activity after complying with all the necessary formalities according to law on the subject matter in respect of which the permission under section 21(1) came to be granted from the date of receipt of the writ in this case by the Competent Authority and to complete such construction within the stipulated time limit of five years beginning on and from the date of the

order granting such permission after excluding the time from the date of the show cause notice for the proposed action under section 21(2) of the Act till the writ in each case is received by the Competent Authority as aforesaid. The Registry is directed to send the writ in each case as expeditiously as possible but in any case latest by 14th March, 1994. Rule is accordingly made absolute with no order as to costs."

It appears that the matter was carried in LPA No. 928 of 1995 which was rejected on 15.6.1998.

4. Now in the present case, some construction has already been made and with regard to remaining construction the parties were at dispute as reflected by the facts of the present case. Now the petitioner has conceded before this Court through the petitioner's learned advocate that the petitioner does not propose to make construction of any unit for commercial purpose. Time will have to be extended for enabling the petitioner to follow the conditions of the exemption. Hence, the following order is passed :-

The impugned order passed by the respondent is hereby set aside and the petitioner is granted time to comply with the scheme as sanctioned earlier by extending the time upto 31st May, 2001.

Rule is made absolute in the aforesaid terms with no order as to costs. Direct Service is permitted.

November 19, 1998 (M.S. Parikh, J.)